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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**FILED**

UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

JAN 6 1998 *de*

KEITH RUSSELL JUDD,

Petitioner,

v.

No. CIV-98-1478 JC/JHG

STATE OF NEW MEXICO,

Respondent.

ENTERED ON DOCKET  
*1/11/99*

**MEMORANDUM OPINION AND ORDER**

This matter is before the Court *sua sponte* to consider Petitioner's petition for removal of state criminal prosecution filed December 1, 1998. Petitioner alleges that, in the state court criminal proceeding, he is unable to enforce his right to equal protection of the law under the Americans With Disabilities Act.

The petition will be denied as improper, and the case will be remanded to the State court.

As stated by the United States Court of Appeals for the Tenth Circuit:

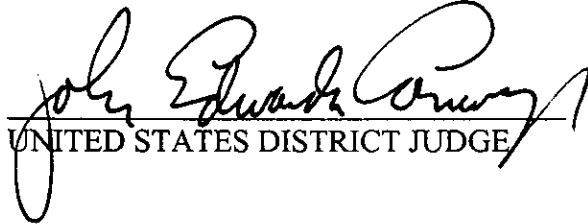
The Supreme Court established a two part test for [28 U.S.C.] section 1443 removal petitions in *Johnson v. Mississippi*, 421 U.S. 213 (1975): "First, it must appear that the right allegedly denied the removal petitioner arises under a federal law 'providing for specific civil rights stated in terms of racial equality.' " A state court defendant's claim that "prosecution and conviction will violate rights under constitutional or statutory provisions of general applicability or under statutes not protecting against racial discrimination" is insufficient for removal. Second, it must appear "that the removal petitioner is 'denied or cannot enforce' the specified federal rights 'in the courts of [the] State.' "

*Colorado v. Lopez*, 919 F.2d 131, 132 (10th Cir. 1990) (citations omitted). As in *Lopez*, Petitioner "has made no claim that he is being denied a right arising under a federal law

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‘providing for specific civil rights stated in terms of racial equality.’ ” *Id.* (quoting *Georgia v. Rachel*, 384 U.S. 780, 792 (1966)). The petition will be denied and the case remanded.

IT IS THEREFORE ORDERED that Petitioner’s petition for removal filed December 1, 1998, is DENIED, this case is REMANDED to the New Mexico Second Judicial District Court, and this action is DISMISSED.

  
UNITED STATES DISTRICT JUDGE